



O'Melveny & Myers LLP
1999 Avenue of the Stars
8th Floor
Los Angeles, CA 90067-6035

T: +1 310 553 6700
F: +1 310 246 6779
omm.com

File Number:

October 26, 2022

Molly M. Lens
D: +1 310 246 8593
mlens@omm.com

Via ECF

MEMORANDUM ENDORSED

The Honorable Gabriel W. Gorenstein
U.S. District Court for the Southern District of New York
500 Pearl Street
New York, NY 10007

**Re: Marvel Characters, Inc. v. Lieber, No. 21-cv-07955;
and consolidated cases
21-cv-7957 and 21-cv-7959**

Dear Judge Gorenstein:

As per Your Honor's October 19, 2022 request, the Parties have met and conferred and jointly submit this letter.

Five parallel actions are currently pending in this Court and the United States District Courts for the Eastern District of New York and the Central District of California: *Marvel Characters, Inc. v. Lieber*, No. 1:21-cv-07955-LAK (S.D.N.Y.); *Marvel Characters, Inc. v. Ditko*, No. 1:21-cv-07957-LAK (S.D.N.Y.); *Marvel Characters, Inc. v. Dettwiler*, No. 1:21-cv-07959-LAK (S.D.N.Y.)¹; *Marvel Characters, Inc. v. Solo*, No. 1:21-cv-05316-DG-TAM (E.D.N.Y.); and *Marvel Characters, Inc. v. Hart-Rico*, No. 2:21-cv-07624-DMG-KES (C.D. Cal.) (collectively, the "Pending Actions"). The Parties previously requested that parallel schedules be issued across the Pending Actions to facilitate, inter alia, discovery and other pretrial matters to proceed efficiently. With certain limited exceptions, the Courts issued largely parallel schedules as jointly requested by the Parties.²

The Parties commenced depositions this week, and discovery is not scheduled to close in the S.D.N.Y. Actions until March 1, 2023. The Parties would like to complete discovery before engaging in settlement discussions, and thus respectfully request that the Court schedule the

¹ On March 25, 2022, the Court consolidated the three cases in this jurisdiction (the "S.D.N.Y. Actions") for all pretrial purposes. See Order (ECF No. 38), *Marvel Characters, Inc. v. Lieber*, No. 1:21-cv-07955-LAK (S.D.N.Y.); Order (ECF No. 30), *Marvel Characters, Inc. v. Ditko*, No. 1:21-cv-07957-LAK (S.D.N.Y.); Order (ECF No. 36), *Marvel Characters, Inc. v. Dettwiler*, No. 1:21-cv-07959-LAK (S.D.N.Y.).

² Earlier this month, at Defendants' request, Judge Kaplan modified the schedule for the S.D.N.Y. Actions, extending the deadlines for the close of discovery and the last day to file motions for summary judgment. The Parties are in the process of submitting stipulations in the E.D.N.Y. and C.D. Cal. actions to realign the schedules across all the Pending Actions.

settlement conference for the week of March 6, 2023. Relatedly, the Parties note that there is a settlement completion date of April 11, 2023 in the C.D. Cal. Action. Thus, a settlement conference date during the week of March 6, 2023 would enable the Parties to engage in comprehensive, as opposed to piecemeal, settlement discussions across the Pending Actions.

The Parties further request an in-person settlement conference. To accommodate travel schedules, the Parties would prefer that the conference be scheduled on a Tuesday, Wednesday, or Thursday (i.e. March 7, 8, or 9), to the extent consistent with the Court's schedule.

Respectfully submitted,

/s/ Molly M. Lens

Molly M. Lens
of O'Melveny & Myers LLP
*for Plaintiff and Counterclaim-Defendant
Marvel Characters, Inc.*

/s/ Marc Toberoff

Marc Toberoff
of Toberoff and Associates, P.C.
*for Defendants and Counterclaimants
Lawrence D. Lieber, Patrick S. Ditko, and
Keith A. Dettwiler*

The Court is unavailable the week of March 6, 2023. The Court will instead schedule the settlement conference for March 14, 2023. If necessary, that date may be changed by following instructions in the order that is being separately issued scheduling the conference.

So Ordered.



GABRIEL W. CORENSTEIN
United States Magistrate Judge

October 27, 2022